

REMARKS

By this amendment, Applicants have amended claim 1 and canceled claims 3-6. As a result, claims 1, 7-11, 13, 15 and 17 remain pending in this application. This amendment is being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to pursue the full scope of the subject matter of the original claims, or claims that are potentially broader in scope, in the current and/or a related patent application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, the Office rejects claim 1 and 3-6 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claim 1 to describe attributes as a demand for services and at least one of a resource of the system including a software status of a software server, a cache state of the software server, a time period required to provision at least one of the resources for the service wherein the resources comprise the software server, the image server, a network, or a storage system, and a load on the image server. Support for this amendment is found in paragraphs [0027] through [0030] of the specification. Applicants request withdrawal of this rejection.

Further, the Office rejects claims 1, 3-11, 13, 15 and 17 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Aziz et al. (U.S. Patent No. 6,597,956), hereinafter referred to as “Aziz”. Applicants assert that Aziz fails to show the attributes of “a software status of a software server, a cache state of the software server, a time period required to provision at least one of the resources for the service wherein the resources comprise the software server, the image server, a network, or a storage system, and a load on the image server (claim 1).” The

Office asserts that Aziz shows this feature by citing col. 5, lines 13-17 of Aziz. However, Aziz only teaches each VSF can change in terms of number of CPUs, storage capacity and disk and network bandwidth based on demand or other factors. These other factors are policy considerations (col. 11, lines 7-15). Never is there taught the provisioning of resources based on the demand and the other attributes. Aziz teaches that resources are allocated on demand or policy, not attributes.

Moreover, the present invention is specific to provisioning resources on an image server. The Office alleges that it would be obvious to utilize the system of Aziz to perform such functions. However, Aziz teaches that “No computing element is dedicated to any particular role or task.” (col. 9. lines 5-6). In the present invention, software servers are dedicated to a particular task and this attribute is a factor in allocating the resource (paragraph [0027]). Thus, if one used Aziz as the Office suggests, one would have to disregard the teaching that no computing element is dedicated to a particular task. One cannot violate the teachings of a reference to present an obviousness rejection and therefore this rejection should be withdrawn.

In fact, the Office in presenting the obviousness rejection admits that Aziz fails to teach determining attributes of the system on the image server, the attributes comprising the demand for another service in the plurality of services and at least one of a software status of a software server, a cache state of the software server, a time period required to provision at least one of the resources for the service wherein the resources comprise the software server, the image server, a network, or a storage system, and a load on the image server. These attributes all regard a computing element dedicated to a particular task. So, as noted above, this is contrary to the teaching of Aziz. Therefore, the Office is disregarding a specific teaching of Aziz and this is impermissible. Applicants request withdrawal of the rejection.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/Carl F. Ruoff/

Carl F. Ruoff
Reg. No. 34, 241

Date: March 31, 2009

Hoffman, Warnick LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)